SINGAPORE REPORTS

Teo Soh Lung v Minister of Home Affairs & Ors

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 30 OF 1989
WEE CHONG JIN CJ, THEAN AND CHAN SEK KEONG JJ
3 APRIL 1990

Constitutional Law — Habeas corpus — Detention under Internal Security Act — Judicial review — Recent amendments have effect of ousting court's jurisdiction to review detention order — Objective test not applicable — Internal Security Act (Cap 143, 1985 Ed), ss 8(1), 8A & 8B — Republic of Singapore Constitution (Amendment) Act 1989 — Internal Security (Amendment) Act 1989

Constitutional Law — Amendment to the Constitution — Parliament may limit scope of judicial review in ISA cases — Subjective test adopted — Basic features doctrine not conclusively decided — Republic of Singapore Constitution (Amendment) Act 1989 — Internal Security (Amendment) Act 1989

Preventive Detention — Detention under Internal Security Act — Satisfaction of President and minister not reviewable by the courts — Issues of fact — Whether the detention had anything to do with national security issues — Internal Security Act (Cap 143, 1985 Ed), ss 8(1), 8(A) & 8B — Internal Security (Amendment) Act 1989

The appellant was detained under the Internal Security Act (Cap 143, 1985 Ed) ('ISA') in 1987 for her alleged involvement in a Marxist plot to 'subvert the existing social and political system in Singapore'. Her application for habeas corpus was granted by the Court of Appeal on a technical deficiency in the detention order (see *Chng Suan Tze* v *Minister of Home Affairs & Ors*[1]) but she was subsequently re-arrested. In January 1989, Acts No 1 and No 2 of 1989 amended s 8 of the ISA; these Acts came into operation respectively on 27 and 30 January 1989. Act No 2 of 1989 added four new provisions to the ISA which had the effect of:

(a) pegging the law governing judicial review of any decision made or done by either the President or the minister under the ISA to that subsisting as at 13 July 1971 (s 8B(1));
(b) ousting judicial review of any act done or decision made by either the President or the minister under the provisions of the ISA, except questions relating to compliance with any procedural requirement of the Act (s 8B(2));
(c) stopping all appeals to the Privy Council in all ISA cases (s 8C); and
(d) making the new provisions applicable retrospectively, ie in respect of proceedings instituted before or after the commencement of the Internal Security (Amendment) Act 1989.

In the High Court, the appellant's application for habeas corpus was dismissed by Chua J (see [1989] 2 MLJ 449) and in this appeal, she argued that:

(a) The Court of Appeal's views on judicial review in *Chng Suan Tze*[1] correctly expressed (i) the law in ISA cases except where the law has been amended by subsequent legislation and (ii) the law of England, and the conformity between the law of England, Singapore and other Commonwealth countries.
(b) The law governing judicial review in Singapore was the same as in England as at 13 July 1971 and that *Chng Suan Tze*[1] did not make new law, but expressed a view on the law which followed long standing principle, universally applied throughout the common law world, which places on the courts the duty to ensure that the executive does not act outside the limits of its power. Accordingly, the new s 8B(1) of the ISA had no effect on the principles stated in that case.
(c) In fulfilling their role of ensuring that the government does not step outside the ambit of its statutory powers, the courts are entitled to review the grounds and the facts to determine whether the power had been exercised for the purpose of the ISA; that in exercising such function, the court is entitled to ask for some evidence, beyond the mere assertion of the executive, to show that the detention is made for the purpose of the ISA.
(d) In the present case, the government's submission based on the amendments to the ISA and the Constitution, if accepted, would give arbitrary and unlimited power to the executive as the court would not be able to intervene in the clearest cases of abuse of power.
(e) The amendments to the ISA do not confer such arbitrary and unlimited power on the executive and it is for the court to decide whether what the executive has done is within the scope of the legislation.

Held, dismissing the appeal:

(1) The language of s 8B(1) is plain and unambiguous and it expressly refers to the relevant law applicable and declared in Singapore on 13 July 1971 and excludes the law in any Commonwealth country before, on or after that date. The case of *Lee Mau Seng* v *Minister of Home Affairs*[3] is undisputedly the relevant decision given on 13 July 1971 and referred to in the section. It must therefore follow that s 8B(1) be construed as reinstating *Lee Mau Seng*[3] as 'the applicable and declared law governing judicial review' under the ISA.

(2) The appellant has not denied that the allegations of fact supporting the grounds of detention were founded on the primary facts set out by the court. These allegations of fact made by the government are inferences or judgmental facts on which, in this case, the government was entitled to reach. The appellant had not discharged the burden of proving that the original detention order was ultra vires on the ground that there was no factual basis that national security considerations were involved. The factual basis was, in the court's view, the government's allegation or perception of the existence of the Marxist plot. It was on account of this alleged plot that national security interests became a factor in determining whether the appellant had been involved in the plot and if so, whether she ought to be detained. In that respect, there is no question that the original detention order was not within the scope of the ISA.

(3) The next question to consider is whether a change occurred in the security status of the appellant when the detention order was suspended. Under s 10 of the ISA, the minister may revoke any suspension detention direction 'if he is satisfied ... it is necessary in the public interest that such direction be revoked'. The necessity to revoke is a matter for the subjective satisfaction of the minister. Public interest is not the same as national security interest, and what is in the public interest is not necessarily confined to the requirements of national security. As such, even if it is shown that a decision is not made on considerations of national security, it does not follow that the decision may not have been made on other public interest grounds.

(4) It is clear from the terms of s 10 that the government is entitled at any time and from time to time to re-assess the security risk of the appellant to decide whether or not to revoke the suspension direction in the public interest, whether or not the appellant had breached any of the conditions of her release. The minister has stated on affidavit that he did re-assess the security status of the appellant after she made the joint press statement. Having regard to the circumstances of the case, the appellant has not discharged the burden of proving that the minister revoked the suspension direction on the ground that she made a joint press statement and not on the ground of a re-assessment of her security status. She has also not proved that in the re-assessment the minister had not taken into account the interest of national security.

(5) In determining whether or not the minister had considered national security interests in revoking the suspension direction, the court considered the following matters in determining whether a factual basis existed for national security interest to be taken into account: first, that the original detention order was within the scope of the ISA. A Marxist plot to subvert the existing social and political system in Singapore is by its nature a national security concern and the detention order, read together with the statutory statement, spoke for itself in the matter of national security. Secondly, the release of the appellant and the other detainees pursuant to the suspension directions was conditional. In releasing her conditionally, the government merely made an assessment that she was unlikely to resume her former activities and was no longer a security threat, and in this situation, there is no basis for saying that the interest of national security was not involved when the revocation order was made. Thirdly, there is no evidence that the minister's re-assessment was not a genuine re-assessment but was merely an excuse to re-detain the appellant because she had made the joint press statement. Finally, there is in evidence the deposition of the minister that the Cabinet met on 8 December 1988 to reconsider the position of the appellant and was satisfied that it was necessary to detain her under the ISA.

(6) In the circumstances, the court found it unnecessary to consider whether s 8B(2) of the ISA has the effect of precluding the court from reviewing a detention order which is demonstrably made for a purpose or purposes other than national security, or whether, in the alternative, the amendments to s 8 of the ISA are outside the scope of the legislative powers conferred by the amended art 149 of the Constitution or whether, in the further alternative, the purported amendments to the Constitution are invalid as violating the basic structure of the Constitution.

Cases referred to

1 *Chng Suan Tze* v *Minister for Home Affairs & Ors* [1989] 1 MLJ 69 (refd)
2 *CCSU* v *Minister for the Civil Service* [1985] AC 374 (refd)
3 *Karam Singh* v *Menteri Hal Ehwal Dalam Negeri, Malaysia* [1969] 2 MLJ 129 (refd)
4 *Lee Mau Seng* v *Minister for Home Affairs, Singapore* [1971] 2 MLJ 137 (folld)
5 *Anisminic Ltd* v *Foreign Compensation Commission* [1969] 2 AC 147 (refd)
6 *Endell Thomas* v *A-G of Trinidad and Tobago* [1982] AC 113 (refd)
7 *Kesavananda Bharati* v *State of Kerala* AIR 1973 SC 1461 (refd)
8 *Minerva Mills Ltd* v *Union of India* [1981] 1 SCR 206 (refd)
9 *Estate and Trust Agencies (1927) Ltd* v *Singapore Improvement Trust* [1937] AC 898 (refd)
10 *The Zamora* [1916] 2 AC 77 (refd)
11 *Chandler* v *DPP* [1964] AC 763 (refd)
12 *R* v *Home Secretary, ex p Ruddock* [1987] 1 WLR 1482 (refd)
13 *JP Berthelsen* v *Director General of Immigration, Malaysia* [1987] 1 MLJ 134 (refd)
14 *Re Tan Sri Raja Khalid bin Raja Harun* [1988] 1 MLJ 182 (refd)
15 *Minister for Home Affairs* v *Jamaluddin bin Othman* [1989] 1 MLJ 418 (refd)
16 *Associated Provincial Picture Houses Ltd* v *Wednesbury Corp* [1948] 1 KB 223 (refd)

Legislation referred to

Constitution of the Republic of Singapore art 149
Constitution of the Republic of Singapore (Amendment) Act 1989 (Act No 1 of 1989)
Internal Security Act (Cap 143, 1985 Ed) ss 8(1), 8(2), 8A, 8B, 8C, 8D, 10, 11(2)(b)
Internal Security (Amendment) Act 1989 (Act No 2 of 1989)

Appeal from Originating Motion No 188 of 1988 (High Court, Singapore)

Lord Alexander QC (*Patrick Seong* and *George Lim* with him) for the appellant.
S Tiwari (*Joyce Huen* and *Soh Tze Bian* with him) for the respondents.

Cur Adv Vult

Thean J (delivering the judgment of the court): On 8 December 1988 in Civil Appeal No 81 of 1988 (which was decided together with Civil Appeal Nos 63, 64 and 65 and reported as *Chng Suan Tze* v *Minister for Home Affairs*[1]), we ordered the release from detention of Teo Soh Lung (who is also the appellant in this appeal) on the ground that the respondents had not adduced any admissible evidence of the President's satisfaction that it was necessary to detain her in accordance with s 8(1) of the Internal Security Act (Cap 143, 1985 Ed) ('the ISA'). We did not decide whether the detention order and the revocation order would otherwise have been lawfully made.

However, in the course of our judgment we expressed the view (i) that the 'objective' test was applicable to the review by the court of the satisfaction of the President under s 8(1) on *GCHQ*[2] grounds of illegality, irrationality and procedural impropriety, (ii) that although the court would not question the executive's decision as to what national security required, the court could examine whether the executive's decision was in fact based on national security considerations, and (iii) that similarly, although the court would not question whether detention was *necessary* for the purpose specified in s 8(1), the court could examine whether the matters relied upon by the executive fall within the scope of the specified purposes. We rejected the submission that the 'subjective' test adopted in *Karam Singh* v *Menteri Hal Ehwal Dalam Negeri*[3] and its progeny was applicable.

The appellant was re-arrested immediately upon her release and detained under a detention order made on the

same date and effective up to 19 June 1989. The appellant commenced these proceedings for a writ of habeas corpus on 13 December 1988. On 16 December 1988, the government introduced two Bills in Parliament to amend art 149 of the Constitution of Singapore and s 8 of the ISA. These Bills were passed on 25 January 1989 and became law when they were gazetted on 26 January 1989 and 28 January 1989 respectively.

We set out below the relevant parts of art 149 of the Constitution and of s 8 of the ISA (with the amendments in italics).

Article 149 of Constitution

(1) If an Act recites that action has been taken or threatened by any substantial body of persons, whether inside or outside Singapore —

(a) to cause, or to cause a substantial number of citizens to fear, organized violence against persons or property;
(b) to excite disaffection against the President or the government;
(c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence;
(d) to procure the alteration, otherwise than by lawful means, of anything by law established; or
(e) which is prejudicial to the security of Singapore,

any provision of that law designed to stop or prevent that action *or amendment to that law or any provision in any law enacted under the provisions of clause (3)* is valid notwithstanding that it is inconsistent with Article 9, 11, 12, 13 or 14, or would, apart from this article, be outside the legislative power of Parliament.

(2) A law containing such a recital as is mentioned in clause (1) shall, if not sooner repealed, cease to have effect if a resolution is passed by Parliament annulling such law, but without prejudice to anything previously done by virtue thereof or to the power of parliament to make a new law under this article.

(3) *If, in respect of any proceedings whether instituted before or after the commencement of this clause, any question arises in any court as to the validity of any decision made or act done in pursuance of any power conferred upon the President or the Minister by any law referred to in this Article, such question shall be determined in accordance with the provisions of any law as may be enacted by Parliament for this purpose; and nothing in Article 93 shall invalidate any law enacted pursuant to this clause.*

Section 8 of ISA:

(1) If the President is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order —

(a) directing that such person be detained for any period not exceeding two years; or
(b) for all or any of the following purposes [as set out in paragraphs (i) to (v) therein] ...

and any order made under paragraph (b) shall be for such period, not exceeding two years, as may be specified therein, and may by such order be required to be supported by a bond.

(2) The President may direct that the period of any order made under subsection (1) be extended for a further period or periods not exceeding two years at a time.

[(3)-(5) are not relevant].

8A *In this Part, 'judicial review' includes proceedings instituted by way of —*

(a) *an application for any of the prerogative orders of mandamus, prohibition and certiorari;*
(b) *an application for a declaration or an injunction;*
(c) *any writ of habeas corpus; and*
(d) *any other suit or action relating to or arising out of any decision made or act done in pursuance of any power conferred upon the President or the Minister by any provision of this Act.*

8B(1) *Subject to the provisions of subsection (2), the law governing the judicial review of any decision made or act done in pursuance of any power conferred upon the President or the Minister by the provisions of this Act shall be the same as was applicable and declared in Singapore on 13 July 1971; and no part of the law before, on or after that date of any other country in the Commonwealth relating to judicial review shall apply.*

(2) *There shall be no judicial review in any court of any act done or decision made by the President or the Minister under the provisions of this Act save in regard to any question relating to compliance with any procedural requirement of this Act governing such act or decision.*

8C *Notwithstanding the provisions of any other written law, no appeal shall lie to the Judicial Committee of Her Britannic Majesty's Privy Council in any proceedings instituted by way of judicial review in respect of any decision made or act done under this Act or in respect of any question of interpretation of the provisions of Part XII of the Constitution or any law made thereunder.*

8D *Sections 8A, 8B and 8C shall apply to any proceedings instituted by way of judicial review of any decision made or act done under the provisions of this Act, whether such proceedings have been instituted before or after the commencement of the Internal Security (Amendment) Act 1989.*

In the present proceedings, save for the evidence in connection with her re-arrest and re-detention, the evidence adduced by the appellant was substantially the same as that adduced in the previous proceedings. The evidence adduced by the respondents was also substantially the same as in the previous proceedings, save for the evidence in relation to the making of the new detention order. In his affidavit affirmed on 18 February 1989 and filed herein, the Minister for Home Affairs deposed, inter alia, that on 8 December 1988:

(a) the Cabinet, having reconsidered the case of the appellant, was satisfied that she had 'acted in a manner prejudicial to the security of Singapore by being involved, between 1984 and May 1987, in a Marxist conspiracy to subvert the existing social and political system in Singapore, using communist united front tactics with a view to establishing a Marxist state', and that it was necessary to detain her under s 8(1) of the

ISA, with a view to preventing her from acting in any manner prejudicial to the security of Singapore;

(b) the Cabinet tendered its advice to the President; and

(c) the President, on the same day, acting in accordance with the advice of the Cabinet, was so satisfied and accordingly made the detention order.

The grounds of detention on which the order was made and the allegations of fact on which the order was based set out in the statement (the 'statutory statement') required to be served (and which was served on 22 December 1988) on the appellant under s 11(2)(b) of the ISA were the same as the grounds and allegations of fact set out in the statutory statement served on her when she was first detained on 19 June 1987.

The appellant's motion for habeas corpus was heard by Chua J on 6-9 March 1989. Her basic contention on the evidence was that the second detention order was made against her for the same reason that the suspension order was revoked on 19 April 1988, ie, because she made the joint press statement (together with other ex-detainees) in which she denied her involvement in the alleged Marxist conspiracy.

Chua J dismissed the appellant's application and held as follows:

(a) Section 8B(1) affirmed the law as laid down in *Lee Mau Seng* v *Minister for Home Affairs*[4] which, in his view, decided (i) that 'the sufficiency and relevancy of the consideration upon which the executive detained the applicant under s 8(1) were matters for the subjective satisfaction of the President ... (the subjective test)'; (ii) that 'mala fides' or bad faith is not a justiciable issue in the context of the ISA'; and (iii) that accordingly, the respondents could not be required to adduce any other evidence apart from the grounds and allegations of fact to prove that their decision was in fact based on national security considerations.

(b) The decision to detain the appellant was not a purported decision as 'the executive has acted upon its jurisdiction conferred by Parliament', and accordingly, the *Anisminic*[5] principle had no application. (In *Anisminic Ltd* v *Foreign Compensation Commission*,[5] the House of Lords held that 'when words in a statute oust the power of the High Court to review decisions of an inferior tribunal, they will not have the effect of ousting that power if the inferior tribunal acted without jurisdiction' or 'if it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity' (per Lord Reid at p 171), which principle was held applicable to an ouster clause in the Trinidad and Tobago Constitution by the Privy Council in *Endell Thomas* v *A-G of Trinidad and Tobago*.[6]

(c) The amendments to the ISA were within the scope of art 149 of the Constitution as they were designed to stop or prevent subversion, and further, this was a non-justiciable issue as national security was the responsibility of the executive.

(d) The amendments to the Constitution (read with the amendments to the ISA) were a legislative and not a judicial act as they did not direct a particular judgment to be entered in a particular case; they did not usurp judicial power but reaffirmed principles of law laid down by the courts.

(e) The basic structure doctrine as propounded by the Supreme Court of India in *Kesavananda Bharati* v *State of Kerala*[7] and *Minerva Mills Ltd* v *Union of India*,[8] had no application to the Constitution and any provision therein could be validly amended in compliance with the amending procedure provided in the Constitution; accordingly, the 1989 constitutional amendments were valid.

Issues in appeal

In this appeal, the issues of law and fact canvassed by Lord Alexander were substantially those raised by Mr Lester before Chua J. His arguments on these issues were substantially those advanced by Mr Lester and rejected by Chua J. However, Lord Alexander has advanced before us an additional argument that s 8B(1), in restoring the subjective test, made no change in the law as the Court of Appeal in *Chng Suan Tze*[1] has expressly stated that the court could not substitute its judgment for that of the executive in matters of national security. He contended that the court's obiter dicta in relation to the objective test were directed to the question of *existence* of some facts relevant to national security and not the *evaluation* of such facts for the purpose of determining whether or not it is necessary to make a detention order.

At the outset of the appeal, Lord Alexander conceded that governments in all countries are responsible for ensuring the security of their country and that in Singapore, Parliament has conferred upon the government a power to detain without trial. He also conceded that it is the government that has the discretion to determine when that power shall be exercised and that the courts cannot review the exercise of that discretion. He submitted that the courts have only one role, which is to ensure that the government does not step outside the ambit of its statutory powers.

Appellant's case

Lord Alexander's arguments on s 8B(1) were as follows:

(1) The views expressed by the Court of Appeal in *Chng Suan Tze*[1] on judicial review in ISA cases correctly state (a) the law of Singapore, except insofar as the law

has been amended by valid subsequent legislation and (b) the law of England, and the conformity between the law of England, Singapore and other Commonwealth countries.

(2) The law governing judicial review in Singapore was the same as in England as at 13 July 1971 as *Chng Suan Tze*[1] did not make new law but expressed a view on the law which followed long standing principle, universally applied throughout the common law world, which places on the courts the duty to ensure that the executive does not act outside the limits of its power. This principle was applied by the Privy Council in Singapore as long ago as 1937 in *Estate and Trust Agencies (1927) Ltd* v *Singapore Improvement Trust*.[9] It was applied in a national security context in *The Zamora*,[10] *Chandler* v *DPP*[11] and *CCSU* v *Minister for the Civil Service*[2] ('the *GCHQ* case') and led the Court of Appeal in *Chng Suan Tze*[1] to reject the argument that the court had no role whatsoever to play in determining whether the executive had acted within the scope of the ISA, ie for national security purposes. In patrolling the four corners of the legislation limited to the *GCHQ* grounds of illegality, irrationality or procedural impropriety, the court was merely exercising its classic supervisory role over abuse of power by the executive. Accordingly, s 8B(1) does not affect the principles stated in *Chng Suan Tze*.[1]

(3) In fulfilling their role of ensuring that the government does not step outside the ambit of its statutory powers, the courts are entitled to review the grounds and the facts to determine whether the power has been exercised for the purpose of the ISA, ie for national security purposes; that in exercising such function, the court is entitled to ask for some evidence, beyond the mere assertion of the executive, to show that the detention is made for the purposes of the ISA; in doing so, the court would not be usurping the power of the executive to weigh the requirements of national security or substituting its views of the merits of the decision made for national security purposes, but is merely performing its role of ensuring that the executive does not act outside its statutory powers: see the *GCHQ* case,[2] *R* v *Home Secretary, ex p Ruddock*[12] and *JP Berthelsen* v *Director General of Immigration, Malaysia*.[13]

(4) In the present case, the government's submission based on the amendments to the ISA and the Constitution, if accepted, would give arbitrary and unlimited power to the executive as the court would not be able to intervene in the clearest cases of abuse of power, eg if a person is detained solely for having red hair or for failing a professional examination or for having acted as a lawyer against the government.

(5) The amendments to the ISA do not confer such arbitrary and unlimited power: (a) they are expressed to apply only to decisions made or act done 'in pursuance of any power conferred ... by the provisions of this Act' (s 8B(1)) or 'made ... under the provisions of this Act' (s 8B(2)). Since the Act only permits decisions to be taken for certain specified purposes, ie for national security purposes, decisions are only within s 8B(1) and (2) if taken for such purposes. Thus the court still has to decide whether what the executive has done is within the scope of the legislation; (b) they re-enact a long established principle of law in Singapore: see *Estate and Trust Agencies (1927) Ltd*;[9] moreover, (c) under the *Anisminic*[5] doctrine, a decision under legislation is a nullity if it is not within the scope of the statutory powers and is therefore a decision outside the scope of s 8B(1) and is not a decision for the purpose of s 8B(2).

In relation to the subjective test restored by s 8B(1) of the ISA, as distinguished from the objective test referred to in *Chng Suan Tze*,[1] Lord Alexander did not wish to draw a distinction between the two tests in the way it was done by Mr Lester in *Chng Suan Tze*.[1] His position in this appeal is that much of the decision of the executive is subjective and that the role of the courts is not to review on totally objective grounds but to be satisfied that there is material which shows that the preventive power has been used for national security purposes. He suggested that this was what this court decided in *Chng Suan Tze*[1] and not that the court could substitute its own judgment for that of the executive on the merits of a decision to detain a person under the ISA. In his view, the satisfaction of the President under s 8(1) is subjective in the sense that it is for the executive, and not for the courts, to decide, on the merits and in the light of the circumstances of each individual case, whether the requirements of national security demand any action and, if so, what that action should be. He accepts this to be the law in 1971 and the law under the 1989 amendments. However, he contends that the supervisory role to ensure that requirements of national security are in reality in issue is not inconsistent with the subjective satisfaction of the executive, as once the court is satisfied of that on the evidence, and not on mere assertion, then the court will go no further. It is in that limited sense that the court's role is objective. Implicit in this submission is that the subjective test does not allow the executive to be subjectively satisfied that a thing is when it is factually and demonstrably not or that a person with red hair is, ipso facto, a security threat and for that reason it is necessary to detain him under the ISA.

As regards *Lee Mau Seng*[4] and *Karam Singh*,[3] Lord Alexander submitted that they did not hold that a detention order would be upheld if it were shown that it was totally unconnected with the purpose of the enabling legislation, eg the detainee's red hair or failure to pass a

professional examination, and that *Karam Singh*[3] was entirely consistent with the principles reasserted in the *GCHQ* case.[2] He accepts that *Lee Mau Seng*[4] decided that there can be no inquiry into the sufficiency of the grounds of detention since this would be to substitute the court's own judgment for the President's subjective satisfaction, but he accepts this only if facts are shown to exist which demonstrate that the decision to detain was taken on grounds of national security. He submitted that the Chief Justice did not decide that the government did not have to satisfy the court that the detention related to national security as that case proceeded before him on the assumption that the detention order was made for national security considerations.

Similarly, Lord Alexander argued that in *Karam Singh*[3] it was not in dispute that there was evidence that the detention was made on national security considerations. The main issue was the extent to which the court could review the allegations of fact in order to require further and better particulars so that the detainee could be facilitated in making representations to the advisory board. He referred to the statement of Azmi LP at p 138 that it was open to the detainee to show that the power to detain had been exercised mala fide or improperly, ie for a collateral or ulterior purpose other than for preventing the detainee from doing acts prejudicial to the security of the state. He referred to subsequent cases where detention orders were successfully challenged on this ground, viz *Re Tan Sri Raja Khalid bin Raja Harun*[14] and *Minister for Home Affairs* v *Jamaluddin bin Othman*.[15]

Lord Alexander accordingly contended that on the basis of the law applicable and declared on 13 July 1971, the re-detention of the appellant on 8 December 1988 was not within the scope of s 8(1) of the ISA as it was not made on national security considerations but solely on the ground that she had made a public denial of her involvement in the alleged Marxist plot in exercise of her constitutional right of free speech. Counsel further contended that if she could be lawfully detained under the ISA on that ground alone and the court were unable to review the legality of the detention because of the 'subjective' test or by reason of s 8B(2) of the ISA, it must follow that the amendments to the ISA have conferred on the government an arbitrary power to arrest and detain on grounds not limited to national security, with the consequence that they are unconstitutional since their scope, being in law unlimited, would be far wider than anything permitted by art 149(1) of the Constitution which itself is subject to the express limitation that a law enacted thereunder must be 'designed to stop or prevent action', actual or threatened, which is prejudicial to the security of Singapore.

Respondents' case

Mr Tiwari supported the reasoning of Chua J on all the issues. As regards s 8B(1), he made the following submissions:

(1) The respondents accept that the courts may patrol the four corners of any legislation to determine whether the executive has exceeded its statutory powers, but the extent of such role depends on the subject matter and the wording of the legislation. As s 8 of the ISA places the responsibility on the executive to determine whether it is necessary to detain a person (which must by its very nature include a consideration of whether national security is involved), the court does not have a role in requiring the executive to produce evidence that national security is involved in such cases. To allow the court to examine the evidence to determine whether the detention is for national security purposes is to allow it to substitute its judgment for the subjective satisfaction of the executive.

(2) The respondents do not contend that the courts cannot intervene if the applicant is detained for the reason that she has red hair or has failed a professional examination: such a case has not arisen.

(3) Section 8B(1) provides that the law as declared on 13 July 1971 (in *Lee Mau Seng*[4]) shall henceforth be the law governing judicial review in Singapore and not the law of any Commonwealth country *before, on or after* that date. As *Lee Mau Seng*[4] and *Karam Singh*[3] did not require that the government must satisfy a threshold test that the power to detain was exercised for national security considerations, they cannot be reconciled with or co-exist with the *GCHQ* case,[2] *Associated Provincial Picture Houses Ltd* v *Wednesbury Corp*[16] and other similar Commonwealth cases.

(4) The Court of Appeal in *Chng Suan Tze*,[1] in rejecting the subjective test and in stating that the objective test applies to determine the satisfaction of the President under s 8 of the ISA departed from established law as laid down in *Karam Singh*[3] and declared in *Lee Mau Seng*.[4] Section 8B(1) has restored the subjective test which is inconsistent with the observations of the Court of Appeal on the objective test, the grounds of judicial review laid down in the *GCHQ* case[2] and the burden of proof.

(5) By virtue of the subjective test as declared in *Lee Mau Seng*,[4] (i) no court may question the sufficiency, relevance or otherwise of the allegations of fact and grounds as those are matters for the subjective judgment of the President acting in accordance with the advice of the Cabinet; (ii) save for the statutory statement containing the grounds of detention and the allegations of fact, the executive need not show that the detention is for national security purposes as national security is a matter for the subjective satisfaction of the President acting in accordance with the advice of the Cabinet;

and (iii) mala fides/improper purpose is not a ground of challenge to the validity of a detention order.

(6) Once the executive has produced a valid detention order, the burden was on the detainee to prove that her detention was unlawful, based on a *permissible* ground of challenge (our emphasis): the appellant's contention is that she was detained on the ground that she had issued a press statement. As this was not the case, she has failed to discharge such burden.

(7) Even if the court has to be satisfied on evidence that the detention is made for national security considerations, the respondents have adduced sufficient evidence that the re-detention of the appellant was made on such considerations.

Interpretation of s 8B(1) ISA

Lord Alexander's submission is that there can be no proper examination of what the relevant law in Singapore was on 13 July 1971 without reference to English common law principles on that date, as these principles were incorporated into Singapore's common law since the 19th century. On that basis, references were made to English and Commonwealth authorities before and after the date showing that the law on 13 July 1971 was the law reasserted in the *GCHQ* case[2] and *Chng Suan Tze*.[1]

We do not agree with this approach. The language of s 8B(1) is plain and unambiguous. It expressly refers to the relevant law *applicable and declared* in Singapore *on 13 July 1971* and excludes the law in any Commonwealth country *before, on or after that date*. It is not in dispute that *Lee Mau Seng*[4] was the relevant decision of the High Court of Singapore given on 13 July 1971. It is also not in dispute that there is no other relevant decision in Singapore given on that date. On the face of s 8B(1), it is clear from the specific reference to 13 July 1971 and the exclusion of the law in any Commonwealth country before, on or after that date that Parliament has intended that the relevant law governing judicial review shall be the law *applicable and declared* in Singapore on *13 July 1971*, and not, as Lord Alexander appears to suggest, the law as it *existed* on that date.

In our judgment, it must therefore follow that s 8B(1) must be construed, in accordance with the clear legislative intention, as reinstating *Lee Mau Seng*[4] as 'the applicable and declared law governing judicial review' under the ISA.

The next question is, therefore, what precisely did *Lee Mau Seng*[4] decide? In *Lee Mau Seng*,[4] the applicant had been detained under the ISA to prevent him from acting in any manner prejudicial to the security of Singapore on the grounds that he, as the managing director of the *Nanyang Siang Pau*, had been responsible for influencing the newspaper's editorial policy to glamourize communism and to stir up communal and chauvinistic sentiments over the Chinese language, education and culture. The four allegations of fact made against him were, (1) that under his management and control, he had made use of the *Nanyang Siang Pau* to instil admiration for the communist system and contrasted it with the more unsavoury aspects of Singapore life, (2) that he had utilized the said newspaper to arouse communal sentiments over the Chinese language, education and culture, (3) that he had continuously echoed in the newspaper the pro-communist cry that Singapore's independence was a 'phoney' and (4) that he had used deliberate falsehood to whip up communal fears and openly incite communal hatred against the government. These allegations of fact clearly involved considerations of national security.

Mr Marshall, who was counsel for the applicant, put forward a number of arguments which had been rejected in *Karam Singh*.[3] They were that the recital of the purposes (which he again called 'grounds') were ambiguous, being in the alternative, and that the grounds of detention and allegations of fact were so vague, unintelligible and insufficiently clear as to render it impossible for the applicant to make an adequate representation to the advisory board. The Chief Justice rejected both these arguments. Mr Marshall also contended that if any of the grounds and allegations of fact supplied to the applicant were irrelevant to the purposes of the Act the detention could not be justified as the court would not tell to what extent its absence would have affected the subjective satisfaction of the executive. This argument was raised and rejected in *Karam Singh*.[3] The Chief Justice also rejected this argument.

The last argument raised by Mr Marshall was that 'a court can enquire into the question whether or not the President acted mala fide in making the order of detention and if mala fide is proved, a court can hold that the applicant's detention is illegal'. The learned Chief Justice dealt with this argument in these words:

> I understand Mr Marshall to use the expression 'mala fides' in the sense that the President acting in accordance with the advice of the Cabinet arrived at his satisfaction without exercising care, caution and a sense of responsibility and in a casual and cavalier manner or on vague, irrelevant or incorrect grounds and facts so that his subjective satisfaction with respect to the applicant was not 'with a view to preventing the applicant from acting in any manner prejudicial to the security of Singapore, etc' but for a different purpose altogether.
>
> 'Mala fides' or bad faith in the sense used by Mr Marshall is not in my view a justiciable issue in the context of the Act and the power conferred by the Act on a body such as the President who has to act in accordance with the advice of the Cabinet to direct the issue of an order of detention if the President is satisfied with a view to preventing a person from acting in any manner prejudicial to the security of Singapore, etc.

> In my view the logical result of the argument advanced by Mr Marshall would be that a court can substitute its own judgment for the subjective satisfaction of the President acting in accordance with the advice of the Cabinet, which satisfaction the Act provides is to be the sole condition of a lawful detention, and to that end undertake an investigation into the good faith or otherwise of the President who has to act in accordance with the advice of the Cabinet in arriving at his satisfaction. Such a result, having regard to the provisions of s 12(2) which make the decision of the President final and not be called into question by any court, could not have been intended by Parliament.

Earlier in this judgment, we have set out Lord Alexander's submission that *Lee Mau Seng*[4] did not decide that a detention order could not be challenged on the ground that it was outside the scope of the ISA. Mr Tiwari has not, in this appeal, taken the position that *Lee Mau Seng*[4] decided the courts may not intervene where a person is detained for a purpose which is outside the four corners of the ISA, eg the 'red hair' hypothesis. In para 18 of his written submission (Vol 2, p 11), Mr Tiwari submits that:

> it is not necessary to determine whether the subjective test to be applied under the ISA amounts to a finding that any decision to detain preventively taken in the name of national security cannot possibly be challenged in the courts if the express ground of the decision clearly demonstrates that it was not taken on the ground of national security. The situation has not arisen in this case. This honourable court need not determine such a hypothetical question.

In our view, what Mr Tiwari's submissions amount to is that the legality of a detention order can never be challenged by virtue of the subjective test if the express ground of detention is related to national security considerations. Mr Tiwari does not contend, for the purpose of this appeal, that the courts may not intervene if a person is detained for reasons which have nothing to do with national security. His contention however is that *on the evidence before the court*, the detention of the appellant had everything to do with national security and that the position of the appellant is not, as contended because she has red hair or has failed a professional examination. At this level, the dispute between Lord Alexander and Mr Tiwari turns on the factual issue whether there is any evidence that the detention of the appellant was made for reasons which had nothing to do with national security.

The factual basis of Lord Alexander's submission

Lord Alexander's submission on the law as declared in *Lee Mau Seng*[4] is thus an argument which is available to the appellant only if the evidence in fact demonstrates that she was re-detained for purposes which had nothing to do with national security. We need not consider the validity of this argument unless it is founded on a factual basis. Lord Alexander proceeded on the basis that the executive in re-detaining her did not have regard to national security as a factor in making the detention order and that she was re-detained merely for making a public denial of her involvement in the alleged Marxist plot. She is in the position of a person who is being detained on the ground thats he has red hair. What evidence is there before the court which supports the premises on which Lord Alexander's submission was made?

It is not disputed that in the present case, national security is not relevant as a fact but relevant as a factor in the exercise of an executive discretionary power: see Lord Scarman in the *GCHQ* case[2] at pp 406-407 for an analysis of the problem. It is also not disputed that the respondents have satisfied the initial burden of proving the legality of the appellant's detention and that the appellant has to satisfy the court that the government did not take into account national security considerations *as a factor* in re-detaining the appellant.

Lord Alexander has sought to prove this allegation by way of an argument which is structured as follows: the appellant was detained in June 1987 on the ground that she was involved in an alleged Marxist plot: she was released in September 1987 as the government was satisfied that she was no longer a security threat: in April 1988, she, together with eight other ex-detainees who had also been released earlier with her, made a joint press statement in which she denied her involvement in the alleged Marxist plot: the government re-arrested her on the day following the making of the press statement: nothing had changed between September 1987 and April 1988: accordingly, the re-detention was not made on national security considerations. Lord Alexander also contended that the respondents had also admitted in para 16 of the affidavit of BG Tan Chin Tiong which expressly stated that the appellant was re-detained for making the press joint statement.

The evidence before the court establishes the following: the appellant was first arrested on 21 May 1987 and a detention order was made against her on 19 June 1987 for one year from 20 June 1987 on the ground that she was involved in a Marxist plot to subvert the political and social system of Singapore. She made representations to the Advisory Board in which she (a) alleged she had been ill-treated during the first three days of interrogation, (b) denied she was a Marxist or a communist, (c) denied any knowledge as to whether Paul Lim, whom she knew, was a Marxist or a fellow Marxist of Tan Wah Piow, (d) denied any complicity in the alleged Marxist plot, (e) stated her belief that she was legitimately exercising her civil and political rights and explained her reasons for having supported and worked for the Workers' Party, set out her attitude to the practice of law and her service as a council member of the Law Society as a member of several of its sub-committees, and (f) denied that she was instructed or persuaded by Paul Lim to use the Law Society as a political pressure group. The Law Society had in a letter stated that she had done nothing as a council member

which caused it to doubt her loyalty to Singapore. On 26 September 1987, she and eight other detainees alleged to have been involved in the Marxist plot were released from detention subject to various conditions. The government, in a press release made on the same day, stated that after a careful review of the detainees' positions since their detention, it was 'satisfied that they are unlikely to resume their subversive activities and no longer pose a security threat. The suspension direction will be revoked if any of them re-involves himself/herself in subversive activities or breaches any of the conditions stipulated in the suspension direction'. On 18 April 1988, the appellant, together with the other eight detainees, made a joint press statement denying the government's accusations against them etc. On 19 April 1988, the minister revoked the suspension orders in respect of all the detainees and re-arrested eight of them.

The relevant parts of the revocation order against the appellant stated as follows:

> And whereas on 18 April 1988, the said Teo Soh Lung issued a joint statement, inter alia, denying any involvement in a Marxist conspiracy.
>
> And whereas the Minister for Home Affairs is satisfied that in view of the statement it is necessary in the public interest that the direction dated 26 September 1987 should be revoked.
>
> Now therefore, the Minister for Home Affairs in exercise of the powers conferred on him by s 10 of the said Act hereby revokes the direction dated 26 September 1987 with effect from 19 April 1988.

Soon after the re-arrest, the appellant commenced proceedings for habeas corpus which led to her release on 8 December 1988. She was immediately re-arrested and subsequently re-detained.

At this juncture, it is convenient to refer to the argument advanced by Mr Tiwari that as the appellant has been detained under a new detention order, the court should only concern itself with this order and not the validity of the first detention order or the revocation order. In our view, the making of the new detention order cannot be considered in isolation as it is one in the chain of events that has taken place. The detention of the appellant on 8 December 1988 was merely a continuation of the first detention order after the revocation of the suspension order. Even the duration of the second detention order was made commensurate with the remaining term of the original order.

As we have indicated earlier, the appellant's evidence has not changed from that which she adduced in the earlier proceedings. Although she has consistently denied her complicity in the alleged Marxist plot, she has also admitted the following primary facts: (1) her encounter with Paul Lim in 1984 at a tea party, during which she admitted Paul Lim suggested she help the opposition; she later explained that she admitted this on the repeated suggestion of the interrogators; (2) she assisted the Worker's Party in the 1984 elections but she could not recall whether it was at the suggestion of Paul Lim; (3) she together with Tan Tee Seng and Kenneth Tsang (both of whom were detained as co-conspirators) assisted the Workers' party in improving the quality of its publication *The Hammer*; (4) she had been active in the Law Society as a member of the Legislative Committee (Civil) (Special Assignment) which, during her membership, had submitted (a) a report on The Newspaper and Printing Presses Amendment Bill 1986 to the Council of the Law Society which then issued a press release (criticizing the amendment); (b) an interim report on the fourth term of reference of the Privileges Committee of Parliament on the independence of the subordinate judiciary. She also admitted having spoken at an extraordinary general meeting of the Law Society in 1986 at which she criticized the amendments to the Legal Profession Amendment Bill. She however denied she was ever influenced by Paul Lim, whom she also did not know was a fellow Marxist of Tan Wah Piow, in any of her activities in the Workers' Party and the Law Society. She also admitted having acted for Tan Wah Piow in her professional capacity in connection with his citizenship problem but denied she knew him personally or that he was a Marxist or a member of the Communist Party of Malaya.

The appellant has not denied that the allegations of fact supporting the grounds of detention were founded on the primary facts we have set out above. Lord Alexander, in his submissions, accepted that the court cannot decide the truth of these allegations of fact. We agree. These allegations of fact made by the government are inferences or judgmental facts on which, in this case, the government is well entitled to reach. Accordingly, if it had been necessary for us to determine the legality of the first detention order we would have found that she had not discharged the burden of proving that the original detention order was ultra vires on the ground that there was no factual basis that national security considerations were involved. The factual basis was, in our view, the government's allegation or perception of the existence of the Marxist plot. It was on account of this alleged plot that national security interest became a factor in determining whether the appellant had been involved in the plot and if so, whether she ought to be detained. Even on Lord Alexander's view of the law, there was no question but that the original detention order was, on the basis of the statutory statement, within the scope of the ISA.

That being the case, the next question we have to determine is whether a change occurred in the security status of the appellant when the detention order was suspended. It should be noted that in the earlier proceedings, the challenge to the validity of the revocation order

was made on a somewhat different basis. It was then contended that there was no rational nexus between the government's statement in the press statement for revoking the suspension direction and any statutory purpose for detaining her, and therefore, national security was not a consideration leading to the decision to revoke the suspension direction. The government's statement was as follows:

> The detainees now claim that everything they did was legal and legitimate. When they claim, or worse if they truly believe they have done nothing wrong, there is every likelihood that they will resume their former activities. The government must determine why they have repudiated their earlier statements and reversed their positions.

Mr Lester (in earlier proceedings) contended the government's reasoning that the appellant was likely to resume her former activities if she claimed or did not know they were wrong was irrational (on the *GCHQ*[2] test of irrationality) as she had always claimed that everything she had done was legal and legitimate. This argument has force only if the premise on which it is based is true. The premise is that she was not involved in the alleged Marxist plot. However, this is the very premise with which the government disagreed. The government, on the basis of the evidence it had, came to the conclusion that she was involved. Mr Lester's premise cannot be proved as it is not the function of the court to make an objective finding as to whether or not it is true.

In this appeal, Lord Alexander's contention is that since the appellant had been released on the ground that she no longer posed a security threat, the subsequent repetition in public of the very statements she had previously made and which the government knew represented her case could not have changed her into a security threat: hence, she was not re-arrested because of security concerns but for making the joint press statement. It seems to us that Lord Alexander's argument is in substance no different from that advanced by Mr Lester.

Under s 10 of the ISA, '... the Minister may revoke any [suspension] direction if he is satisfied that the person against whom the order was made has failed to observe any condition so imposed or that it is necessary in the public interest that such direction be revoked.' It is to be observed that the provision uses the same expression 'if [the Minister] is satisfied ... it is necessary' as in s 8. In our view, they have the same effect, ie the necessity to revoke is also a matter for the subjective satisfaction of the Minister. Although Lord Alexander did not direct his submissions specifically to s 10, it is clear that his arguments relating to the second detention order apply equally to the revocation order. His basic point is that the appellant was re-detained for the same reason her suspension direction was revoked. However, public interest is not the same as national security interest, and what is in the public interest is not necessarily confined to the requirements of national security; therefore, even if it is shown that a decision is not made on considerations of national security, it does not follow that the decision may not have been made on other public interest grounds.

It is also clear from the terms of s 10 that the government was entitled at any time and from time to time to reassess the security risk of the appellant to decide whether or not to revoke the suspension direction in the public interest, whether or not the appellant had breached any of the conditions of her release. The minister has stated on affidavit that he did re-assess the security status of the appellant after she made the joint press statement. Mr Tiwari's contention is that whilst the causa sine qua non of the revocation was the making of the joint press statement, the causa causans was the re-assessment of the government that there was a likelihood that the appellant and the other released detainees would resume their former activities.

In our view, having regard to all the circumstances of the case and for the reasons following, we are satisfied that the appellant has not discharged the burden of proving that the minister revoked the suspension direction on the ground that she made a joint press statement and not on the ground of a re-assessment of her security status. She has also not proved that in the re-assessment, the minister had not taken into account the interest of national security.

In our view, in determining whether or not the minister had considered national security interests in revoking the suspension direction, the following matters should be taken into account in determining whether a factual basis existed for national security interest to be taken into account: firstly, that the original detention order was within the scope of the ISA. No doubt the appellant had disputed the legality of that order, but, as we have earlier stated, she was never in a position to satisfy the court that the government had no basis whatever for alleging that she was involved in the Marxist plot. A Marxist plot to subvert the existing social and political system in Singapore is by its nature a national security concern. The detention order, read together with the statutory statement, spoke for itself in the matter of national security. Secondly, the release of the appellant and the other detainees pursuant to the suspension directions was conditional. The conditional nature of her release suggests that the government did not believe her to be innocent, otherwise she would have been released unconditionally. In releasing her conditionally, the government merely made an assessment that she was unlikely to resume her former activities and was no longer a security threat. In short, the government did not release her unconditionally because it was not in the interest of national security to do so. In this situation, there is no basis for saying that the interest of national security was not involved when the revocation order was

made. Thirdly, there is no evidence that the minister's re-assessment was not a genuine re-assessment but was merely an excuse to re-detain the appellant because she had made the joint press statement. As Mr Tiwari has submitted, the original assessment was put in doubt. Finally, there is in evidence the deposition of the minister that the Cabinet met on 8 December 1988 to reconsider the position of the appellant and was satisfied that it was necessary to detain her under and for the purposes of the ISA. The appellant has sought to establish that the Cabinet had abused its power in detaining the appellant. Given the factors we have mentioned above, we are of the view that there is no basis for the court to prefer the earlier assessment of the minister to his subsequent re-assessment and that of the Cabinet.

Accordingly, for the reasons given above, Lord Alexander's submission on the law is not available to him on the facts. The appeal must therefore fail on the facts. It is not necessary for us to decide whether *Lee Mau Seng*[4] would or would not have precluded judicial review if the factual basis in this case had been what Lord Alexander had contended it was.

In the circumstances, it is also unnecessary for us to consider whether s 8B(2) of the ISA has the effect of precluding the court from reviewing a detention order which is demonstrably made for a purpose(s) other than national security, or whether, in the alternative the amendments to s 8 of the ISA are outside the scope of the legislative powers conferred by the amended art 149 of the Constitution or whether, in the further alternative, the purported amendments to the Constitution are invalid as violating the basic structure of the Constitution. The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Seong Tang & Partners; Wee Tay & Lim.*

Reported by *Kevin Tan Yew Lee*

Swaminathan v Golden Plaza Development Pte Ltd

HIGH COURT (SINGAPORE) — SUIT NO 1584 OF 1984
CHAO HICK TIN JC
12 JANUARY 1990

Civil procedure — Interim injunction — Obtained by plaintiff who claims to be tenant of premises — Application by defendants for alleged tenant to pay 'rent' to solicitors as stakeholders

The plaintiff claims to be a tenant of a shophouse ('the premises') paying rent of $1,500 per month which includes the hiring of six grinding machines. He alleges that the premises are subject to the Control of Rent Act (Cap 58, 1985 Ed) and that he is a protected tenant. The defendants are property developers who had bought the premises from the previous owner. The plaintiff obtained an ex parte interim injunction which restrained the defendant and his agents from entering the premises. Later, the court also prohibited the plaintiff and the defendant from removing any items of machinery on the premises. The plaintiff's occupation of the premises was as a result of three agreements entered into between the plaintiff and a third party. By these agreements, the third party hired out to the plaintiff the use of the six grinding machines and granted him a licence to have access to the premises for the purpose of operating the machines. The agreements expressly denied that the relationship between the parties was one of landlord and tenant. The defendants applied for an order that the plaintiff pay the defendants' solicitors as stakeholders the sum of $67,500 for past 'rent' and $1,500 each month in respect of present rent.

Held, granting the defendants' application:

(1) The reason advanced by the defendants to require the plaintiff to make monthly payment for the use of the machines as well as for access to the area where the machines are located, is that the plaintiff by obtaining an interim injunction to preserve the status quo should continue to pay the agreed sum as it falls due. Further, if the plaintiff should fail in his action, the defendant would not only have suffered loss in not being able to proceed with their redevelopment plans, there is no guarantee that they would be able to recover the arrears. The court accepted this reasoning.

(2) The defendants are not asking the monthly sum to be paid to them. They are asking that it be paid to their solicitors as stakeholders. This will not prejudice the position of any party. It is the safest way to safeguard the position of both parties.

[*Editorial Note*: The appeal to the Court of Appeal filed by the plaintiff has lapsed.]

Krishnan s/o Ganesan for the plaintiff.
Andrew Chua for the defendants.

Cur Adv Vult

Chao Hick Tin JC: The plaintiff claims to be a tenant since March 1981 of the ground floor of a shophouse at No 141 Syed Alwi Road, Singapore ('the premises') paying therefore a rent of $1,500 per month, which includes the hiring of six grinding machines. He alleges that the premises are subject to the Control of Rent Act (Cap 58, 1985 Ed) and he is a protected tenant. He says that he runs three